

MARTINE  
PENILLA &  
GENCARELLA, LLP



INTELLECTUAL  
PROPERTY  
COUNSEL

October 24, 2006

United States Patent and Trademark Office  
Post Office 1450  
Alexandria, Virginia 22313-1450

**VIA FACSIMILE ONLY**

**Attention: Deposit Account Refunds**

Re: U.S. Patent Application Entitled: METHOD AND APPARATUS FOR MAKING A  
COMPUTATIONAL SERVICE HIGHLY AVAILABLE  
Application No. 09/513,015 Filing Date: February 20, 2000  
Our Reference: SUNMP576 Deposit Account No. 50-0805

Gentlemen:

This letter is to request a refund for funds that were deducted in error from our deposit account. Extensions for response within fourth month and fifth month are incorrect, as The Appeal Brief and Applicants Reply Brief were both filed within the allowable time.

On May 26, 2006, we received the Notice of Panel Decision from Pre-Appeal Brief Review; **DATE MAILED: 05/24/2006**. The time period for filing an appeal brief will be reset to be one month from mailing this decision. On Friday, June 23, 2006, the Transmittal and Appeal Brief were mailed, via the USPS First Class Mail. Enclosed are copies of the aforementioned referenced materials.

On July 31, 2006, we received the Examiner's Answer, **DATE MAILED: 07/28/2006**, (in response to the appeal brief filed June 23, 2006). The time period for responding is extended two (2) months from the mailing of this office communication. On Thursday, September 28, 2006, the Applicant's Reply Brief was mailed via USPS First Class Mail. Enclosed are copies of the aforementioned referenced materials.

We also enclose a copy of a computer printout of our Monthly Statement of Deposit Account, dated July 31, 2006. The Statement shows two (2) debits dated July 25, 2006 regarding the above-identified patent application. The debits are as follows: \$1,5900.00 for Fee Code 1254 (Extension for response within fourth month) and \$570.00 for Fee Code 1255 (Extension for response within fifth month). The combined total equals \$2,160.00.

As the amount described above should not have been charged to our account. Please refund our Deposit Account No. 50-0805 in the total amount of \$2,160.00 as soon as possible. Thank you for your assistance.

Sincerely,  
MARTINE PENILLA & GENCARELLA, LLP

*Debbie Triacca*  
Debbie Triacca  
Assistant Office Manager

/dt  
Enclosures

710 Lakeway Drive, Suite 200 ■ Sunnyvale, California 94085  
PHONE: 408-749-6900 ■ FAX: 408-749-6901 ■ www.mplplaw.com

PAGE 2/11 \* RCVD AT 10/24/2006 8:09:03 PM [Eastern Daylight Time] \* SVR:USPTO-EPXRF-2/16 \* DNIS:2738500 \* CSID:408 749 6901 \* DURATION (mm-ss):03-50

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## FACSIMILE COVER SHEET



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INTELLECTUAL PROPERTY COUNSEL

MARTINE PENILLA & GENCARELLA, LLP

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Tuesday, October 24, 2006


TOTAL PAGES INCLUDING THIS SHEET:	11	RECEIVER TEL NO: 571-272-6500
SENDER: Debbie Triacca		RECEIVER FAX NO: 571-273-6500
RECEIVER: Refund Branch, Deposit Account		OUR FILE REF: SUNMP576
COMPANY: UNITED STATES PATENT & TRADEMARK OFFICE		PATENT APPLICATION SERIAL NO. 09/513,015
		TITLE: METHOD AND APPARATUS FOR MAKING A COMPUTATIONAL SERVICE HIGHLY AVAILABLE
		PTO DEPOSIT ACCOUNT No. 50-0805

**Message:**

Please see attached:

1. Letter requesting refund and copies of the following references;
2. Notice of Panel Decision from Pre-Appeal Brief Review;
3. Office Communication cover letter (date mailed: 05/24/06);
4. Transmittal of Appeal Brief (mailed June 23, 2006);
5. Patent Postcard and Appeal Brief Fee check #16597 (dated June 23, 2006);
6. Examiner's Answer (dated July 28, 2006);
7. Office Communication cover letter (date mailed: 07/28/06);
8. Applicant's Reply Brief (date mailed: September 28, 2006);
9. Patent Postcard for Applicant's Reply Brief (dated September 28, 2006);
10. PTO Monthly Statement of Deposit Account (dated 7-31-06).

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<b>Application Number</b> 	<b>Application/Control No.</b> 09/513,015	<b>Applicant(s)/Patent under Reexamination</b> BLOCK ET AL.	
	Andrew Caldwell	<b>Art Unit</b> 2142	
<b>Document Code - AP.PRE.DEC</b>			

## Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed December 5, 2005.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☐ Other:

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☒ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

☒ The panel has determined the status of the claim(s) is as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1-5, 7-8, 17-28.

Claim(s) withdrawn from consideration: NONE.

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☐ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) Andrew Caldwell

(2) Beatriz Prieto



ANDREW CALDWELL (3) Lynne Browne  
PATENT EXAMINER

(4) \_\_\_\_\_

U.S. Patent and Trademark Office

Part of Paper No. 05172006

## PATENT POSTCARD - Customer No. 32291

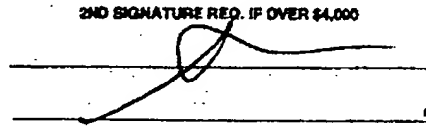
Docket No. **SUNMP576** App. No.: **09/513,015** Date: **June 23, 2006**  
 By: **GAB:slc** Filed: **February 25, 2000** Express Mail No.:   
 Inventors: **BLOCK et al.**  
 Title: **METHOD AND APPARATUS FOR MAKING A COMPUTATIONAL SERVICE HIGHLY AVAILABLE**

The following has been received in the U.S. Patent & Trademark Office on the date stamped below:

MPG, LLP  
2006

DOCKETED - ATTY

- Appeal Brief Transmittal (2 pages) (in duplicate)
- Appeal Brief (11 pages), with Appendix A (Pages A1-A7)
- Copy of Notice of Panel Decision from Pre-Appeal Brief Review (2 pages)
- Check No. 16597 in the amount of \$500.00

<b>MARTINE PENILLA &amp; GENCARELLA, LLP</b> 04-01 <b>INTELLECTUAL PROPERTY LAW</b> 710 LAKEWAY DRIVE, SUITE 200 SUNNYVALE, CA 94085-4013		<b>CITIBANK, FEDERAL SAVINGS BANK</b> 3490 STEVENS CREEK BLVD. SAN JOSE, CA 95117 90-7116/3211	16597
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<b>Five Hundred and 00/100</b>		<b>\$ **500.00</b>	
<b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>		<b>2ND SIGNATURE REQ. IF OVER \$4,000</b> 	
<b>SUNMP576/P4722/AB</b> <b>6597</b>			

MARTINE PENILLA & GENCARELLA, LLP INTELLECTUAL PROPERTY LAW

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Appeal Brief Fee

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,015	02/25/2000	Robert J. Block	83000.1135;P4722/ARG	7018
32291	7590	05/24/2006		
MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				
			EXAMINER	
			PRIETO, BEATRIZ	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
BLOCK et al.

Application No.: 09/513,015

Filed: February 25, 2000

For: METHOD AND APPARATUS FOR  
MAKING A COMPUTATIONAL  
SERVICE HIGHLY AVAILABLE

Group Art Unit: 2142

Examiner: Prieto, Beatriz

Docket No.: SUNMP576

Date: June 23, 2006

## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with  
the United States Postal Service as First Class Mail in an envelope  
addressed to: Commissioner for Patents, P.O. Box 1450,  
Alexandria, VA 22313-1450 on June 23, 2006.Signed: 

Sylvia Castillo

TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION - 37 CFR 41.67)Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is in furtherance of the Notice of Panel Decision from Pre-Appeal Brief  
Review received by the United States Patent and Trademark Office on May 24, 2006.

This application is on behalf of:

☐ Small Entity ☒ Large Entity

Pursuant to 37 CFR 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ \$250.00 (Small Entity) ☒ \$500.00 (Large Entity)The proceedings herein are for a patent application and the provisions of 37 CFR 1.136  
apply:

-1-

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Technology Center

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 09/513,015  
Filing Date: February 25, 2000  
Appellant(s): BLOCK ET AL.

Gina A. Bibby (Reg. No. 4,407)  
For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed June 23, 2006 appealing from the Office action mailed August 31, 2005.



## UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,015	02/25/2000	Robert J. Block	83000.1135;P4722/ARG	7018
32291 7590 07/28/2006 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			SUMMARY EXAMINER PRIETO, BEATRIZ	
			ART UNIT 2142	PAPER NUMBER

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

BLOCK ET. AL.

Application No.: 09/513,015

Filed: February 25, 2000

For: METHOD AND APPARATUS  
FOR MAKING A COMPUTATIONAL  
SERVICE HIGHLY AVAILABLE

) Examiner: PRIETO, BEATRIZ

) Art Unit: 2142

) Confirmation No.: 7018

) Atty. Docket No.: SUNMP576

) Date: September 28, 2006

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1450 Alexandria, VA 22313-1450 on September 28,  
2006.

Signed: 

Sylvia Castillo

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. § 41.41**

Dear Sir:

Applicants submit this paper in response to the Examiner's Answer mailed July  
28, 2006, the two-month period for reply extends to September 28, 2006. Accordingly,  
this reply is believed to be proper.

## PATENT POSTCARD - Customer No. 32291

Docket No. **SUNMPS76** App. No.: **09/513,015** Date: **September 28, 2006**  
By: **GAB:slc** Filed: **February 25, 2000** Express Mail No.:   
Inventors: **BLOCK et al.**  
Title: **METHOD AND APPARATUS FOR MAKING A COMPUTATIONAL  
SERVICE HIGHLY AVAILABLE**

*The following has been received in the U.S. Patent & Trademark Office on  
the date stamped below:*

Appellant's Reply Brief Under 37 C.F.R. § 41.41 (9 pages)

**MPG, LLP**

SEP 28 2006

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FINA

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Page	1

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7 21 06	1097	11458962	ALTEP0820 / A0188301	1011	300.00	15684.00
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7 25 06	294	0146540052	LAH2P431.CN	8014	25.00	12699.00
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7/25/2006/SFORD1 00000001 500805 09513015  
FC:1254 1590.00 CR